

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 20574 OF 2016

Meenakshi Prakash Sabha & Ors	...Appellants
<i>Versus</i>	
Shreedevi Virbhadra Mallabade & Ors	...Respondents

Mr Akshay Sawant, i/b HJ Lulia, for the Appellants.
Mr Sachin K Hande, for the Respondents Nos. 1 & 2.

CORAM: G.S. PATEL, J
DATED: 31st July 2017

PC:-

1. The appeal assails, correctly, an order of 13th July 2016 in an application to set aside an *ex parte* judgment and decree. The respondents argue that the learned judge correctly held that “adequate opportunities” were given to the appellant, who did not avail of these. The appellant urges that there was no unexplained default.

2. There is no dispute that the plaintiff filed her evidence on 17th November 2014. The matter was kept for cross-examination a few days later on 3rd December 2014. The defendants were absent that day and the matter was adjourned by five days to 8th December 2014. On that day it was adjourned by two days till 10th December

2014 and again it was kept on 11th December 2014 and then on 15th and finally 19th December 2014. The last adjournment was till 22nd December 2014 and ultimately the matter was kept for judgment on 5th January 2015. The learned Judge held that an adequate opportunity was given.

3. None of this was necessary. There is an explanation in paragraphs 10 to 16 of the Affidavit in support of the Notice of Motion (pages 80-87). None of this seems to have weighed with the learned Judge, including a dismissal in default of the suit, its restoration, amendments, delayed effecting of the amendments etc. No one suggests that endless adjournments should be granted, but courts must also guard against hastiness in disposing of civil suits because civil rights are finally determined in such actions. An order of costs might have been sufficient, and it was always within the power of the court to issue a summons to any party or to pass an order putting the party to notice with sufficient advance warning that should that party remain absent on the next date, an *ex parte* judgment would be passed.

4. It is equally clear that the appellant cannot get a reprieve except on terms. Mr Sawant for the appellant correctly and unhesitatingly agrees. He offers to pay costs of Rs.10,000/-. This is reasonable, and the suggestion is accepted. These costs are to be paid to the advocates for the respondents within two weeks. Subject to payment of the costs, the appeal is allowed and the order dated 13th July 2016 is set aside. The suit is restored to file. Parties will appear before the learned Trial Court on 28th August 2017 and obtained necessary directions (provided costs are paid). If costs are

not paid, the appeal will stand dismissed, and the order of dismissal of the suit will revive.

5. If the suit stands restored, i.e., that costs are paid, the appellant further undertakes to this court not to apply for an adjournment before the Trial Court under any circumstances for completing the cross-examination of the plaintiffs' witnesses. The defendant will, however, and as part of the conditions on which this order is passed, strictly adhere to the schedule that is set by the Trial Court for production of the defendant's own witnesses and evidence.

6. The appeal is disposed of in these terms. There will be no order as to cost.

(G. S. PATEL, J)